

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

IDAHO PUBLIC)

UTILITIES COMMISSION)

Petition for Rulemaking)

Pursuant to Section 251(h)(2))

of the Communications Act)

CC Docket No. 98-221

REPLY COMMENTS OF CTC TELECOM, INC.

CTC Telecom, Inc. ("CTC"), by its attorneys, hereby submits its reply to the comments filed in the above-referenced rulemaking. As the Commission is aware, this proceeding addresses whether CTC and similarly situated carriers should be regulated as incumbent local exchange carriers ("ILECs") for purposes of Section 251(c) of the Communications Act of 1934, as amended ("Communications Act").

I. CTC Does Not Enjoy an "Exclusive" Right to Serve the Hidden Springs Development

Each of the parties which filed comments supporting the Idaho Public Utilities Commission ("IPUC") repeats and relies upon the IPUC's erroneous claim that CTC is the "exclusive" carrier within the Hidden Springs development near Boise, Idaho.¹ As indicated in CTC's initial comments, CTC is not the exclusive carrier within the Hidden Springs development. So many parties

¹ See Comments of U S West at 1,2,3,5 and 6; Comments of the Telecommunications Resellers Association ("TRA") at 4,5,6 and 10; Comments of MCI Worldcom ("MCIW") at 2,3 and 4; Comments of Ameritech Operating Companies ("Ameritech") at 1,2,3,7 and 8; Comments of AT&T Corp. at 3 and 4.

have been mislead by the IPUC's error, however, that some amplification of this fact is necessary.

First, CTC does not have an exclusive contract to serve the Hidden Springs development. As indicated in CTC's initial comments, the Development Agreement does not give CTC any exclusivity. Rather, paragraph 16 of the Development Agreement plainly states that: "[n]othing in this Agreement affects the right of any end user customer within the Community to select the end user's telecommunications service provider(s) of choice." See CTC Comments at 3 and Exhibit B.

Second, TCI Communications, Inc. ("TCI") has already requested and been granted access to install facilities in the Hidden Springs development. In fact, TCI is currently placing its cables in the same utility trenches as CTC, on an equal basis. See CTC Comments at 3-4 and Exhibit A. The presence of a facilities-based competitor obviously underscores the fact that Hidden Springs is not CTC's exclusive service territory and that CTC is not preventing other carriers from entering the development.

Third, even assuming, arguendo, the specious proposition that the Hidden Springs development constitutes its own "market" for telecommunications purposes, it is clear that U S WEST already serves the precise geographic area within which the Hidden Springs development is being built. See CTC Comments at 21. The IPUC reluctantly admits this within its Petition, although this fact is artfully understated in the IPUC's rhetoric about CTC being the "first" carrier in the area. See IPUC Petition at 1 and 2.

Indeed, U S WEST already qualifies as the area's ILEC for purposes of Section 251(h). See CTC Comments at 22, n.7.

Fourth, contrary to TRA's allegation, CTC is not unregulated. Just like any other competitive LEC ("CLEC") or ILEC, CTC has substantial interconnection, access and resale obligations to other carriers under Section 251(a) and (b), and Section 224 of the Communications Act. See CTC Comments at 22; see also Comments of Time Warner, Inc. ("Time Warner") at 6 and Comments of Electric Lightwave, Inc. ("Electric Lightwave") at 3, 9-10. TRA's claim that CTC will not be subject to any of these interconnection, access or pricing obligations unless it is subjected to the additional requirements of Section 251(c) misreads the statute.²

It has been established beyond dispute that CTC does not enjoy exclusivity regarding telecommunications facilities and services in the Hidden Springs development, and lacks the means or ability to exclude competitors under the law. Without the false premise of CTC's "exclusivity," the arguments advanced by U S WEST, Ameritech, MCIW, and TRA in support of the IPUC's Petition collapse like a house of cards.³

² See TRA Comments at 7.

³ Indeed, AT&T Corp. bases its entire limited, tentative support for the IPUC's Petition upon the assumption that the "exclusivity" described by the IPUC does in fact exist. See AT&T Comments at 3-5.

II. CTC Is Not the Equivalent of an ILEC Under Section 251(h) (2)

U S WEST, Ameritech, MCIW and TRA argue that CTC is the functional equivalent of an ILEC in terms of its facilities, market position and power, and should therefore be regulated as an ILEC for purposes of Section 251(c) of the Communications Act.⁴ As demonstrated in CTC's Comments, as well as the Comments submitted by Time Warner and Electric Lightwave, these proposals are unwarranted and unnecessary to promote competition, and would in fact impair competition.

CTC will not be the sole service provider in the Hidden Springs development. Moreover, CTC lacks the market dominance which led Congress to distinguish ILECs from other carriers throughout the Telecommunications Act of 1996. CTC is a new market entrant, without the preexisting network facilities, customer base, support systems, brand name and other advantages of an established, incumbent carrier (such as U S WEST, one of CTC's potential competitors). See CTC Comments at 12-21; see also Electric Lightwave Comments at 8-10. As a result, CTC cannot be found to occupy a "comparable market position" to U S WEST or any other ILEC, as required by Section 251(h) (2) (A).

CTC also cannot be found to have "replaced" or "supplanted" an ILEC within the development, as required by Section 251(h) (2) (B). U S WEST still serves the area in which the Hidden Springs development is being built, and continues to dominate the

⁴ See U S West at 2-3; Ameritech at 4-5; MCIW at 2-3; TRA at 2-3 and 5-6.

Boise exchange and service area as the ILEC thereof. See CTC Comments at 20-21; see also Time Warner Communications Comments at 9-10. U S WEST and Ameritech's conclusory statements that CTC will "replace" an ILEC by being the "first" carrier to serve the development utterly fail to address these realities.⁵ Frankly, since this matter involves its own service area and customers, U S WEST ought to know better than to make this mistake.

Finally, none of the parties supporting the IPUC indicate how facilities-based CLECs like CTC will possess actual market power. Instead, U S WEST, Ameritech, MCIW and TRA simply make broad and unfounded assertions that CTC will have "all the advantages of a traditional ILEC" or that CTC "will also enjoy economies of density, connectivity and scale." These blanket assumptions do not satisfy the evidentiary requirement of Section 251(h)(2)(B).

As CTC and Electric Lightwave demonstrate, CTC will not in fact enjoy the market power of an ILEC. At the most basic level, the IPUC's determination that the Hidden Springs development is its own "market" for telecommunications services has no basis in law or policy. Rather, it will lead the Commission down a slippery slope where any subdivision (or street, or household) served by a CLEC within a ILEC service area can be considered a "market," and where the respective rights and obligations of CLECs and ILECs will be reversed so as to frustrate and preclude true local competition. See CTC Comments at 15-20 and Electric Lightwave at 7-8. CLECs serving individual developments like Hidden Springs simply lack the

⁵ See U S WEST at 3-4; Ameritech at 5-6.

size, scope, and power of a U S WEST (or other entrenched and established, pre-existing ILEC) of the type intended to be regulated under Section 251(c). Id.

Neither the IPUC nor its supporters have failed shown that any single portion of Section 251(h)(2)'s three-part test has been met. They have, therefore, failed to meet the burden of proof necessary to justify their requested ruling.

III. U S WEST Is Not Prevented From Competing With CTC

In its Reply Comments, the IPUC argues that it is economically unreasonable for U S WEST to compete for customers in the Hidden Springs development because, "any competitor must over build CTC's facilities and that cost for over building is borne by the customer."⁶ As support for this assertion, the IPUC cites affidavits from IPUC Staff members Terri Carlock and Joe Cusick ("Affidavits"). The Affidavits claim that U S WEST cannot compete with CTC since it is constrained by law to follow its filed tariffs, and that its tariffs impose uneconomic charges upon both the developer and any customer that requests facilities-based service in Hidden Springs.

To the extent that it is relevant, the IPUC argument that U S WEST (rather than, for example, TCI or AT&T) cannot compete with CTC does not survive close scrutiny. Under Section 62-622(1)(e) of the Idaho Code, an incumbent carrier such as U S WEST has the unfettered, unilateral ability to immediately lower its

⁶ See IPUC Reply Comments at 14 (emphasis original).

line extension charges and maximum basic local exchange rates at any time. Specifically:

Changes to tariffs or price lists that are for nonrecurring services and that are quoted directly to the customer when an order for service is placed, or changes that result in price reductions or new service offerings, shall be effective immediately upon filing with the commission and no other notice shall be required.

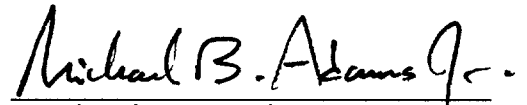
See Idaho Code § 62-622(1)(e). In this respect, CTC and U S WEST have exactly the same measure of competitive pricing freedom under Idaho law. Cf. Idaho Code § 62-622(2).

In fact, there is only one preeminent distinction between ILECs and CLECs under the Idaho statutes. The IPUC establishes maximum basic local exchange rates for ILECs, while CLECs are free to set their own maximum rates. However, both ILECs and CLECs remain subject to the IPUC's authority over service quality standards, customer complaints, customer deposits, and similar consumer protection provisions. See Idaho Code § 62-616.

IV. Conclusion

For the reasons described above, the Comments submitted on behalf of the IPUC's rulemaking request by U S WEST, Ameritech, MCIW, and TRA, as well as the Reply Comments submitted by the IPUC, each fail to demonstrate that regulation of CTC and similarly situated carriers as ILECs for purposes of Section 251(c) is necessary, justified, or in the public interest. The IPUC's Petition must consequently be denied.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

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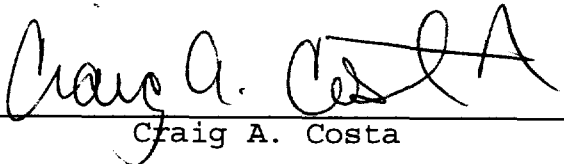
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